

DOCKET FILE COPY ORIGINAL **ORIGINAL**

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEB - 6 1998

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Amendment of Section 73.202(b) )  
Table of Allotments )  
FM Broadcast Stations )  
(Kosciusko and Goodman, Mississippi) )

MM Docket No. \_\_\_\_\_  
RM-9174

To: Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

**PETITION FOR RECONSIDERATION**

Rainey Broadcasting, Inc. ("RBI"), by its counsel, pursuant to Section 1.429 of the Commission's Rules, hereby submits a Petition for Reconsideration of the action taken by Commission letter of January 7, 1998, returning as unacceptable the Petition for Rule Making filed on September 17, 1997 to reallocate Channel 277C3 from Kosciusko, Mississippi to Goodman, Mississippi. RBI believes the Commission erred in returning the petition because the letter ruling relied on an application which had been dismissed. In support hereof, RBI states as follows:

1. RBI is the only remaining applicant for Channel 277C3 at Kosciusko, Mississippi (BPH-950525MK). RBI reported in its Petition for Rule Making (Exhibit 1) that, on September 2, 1997, the one other applicant for the Kosciusko channel, Boswell Broadcasting Company ("BBC"), withdrew its application (BPH-950504MF). On November 6, 1997, the Commission dismissed the BBC application. This dismissal was reported to the Commission in a Supplement filed by RBI on December 17, 1997 (See Exhibit 2).

2. On December 24, 1997, the Commission placed RBI's application on a cut-off list. The 30-day period expired on January 23, 1998 with no objections filed. Thus, RBI's application is expected to be granted shortly.

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3. The Commission letter of January 7, 1998 (See Exhibit 3) recites that “there are two outstanding mutually exclusive applications... on Channel 277C3 at Kosciusko, Mississippi.” The letter further notes that a joint request for settlement was denied on May 2, 1996 and concludes “...thus neither applicant is the permittee of Channel 277C3 at Kosciusko, Mississippi.” Therefore it appears that the staff’s ruling was based on the fact that since two applications were pending, the staff could not honor the request of one of the applicants to change community of license.

### **DISCUSSION**

4. The Commission letter was clearly wrong in finding that there were two pending applications for the Kosciusko channel. The BBC dismissal was requested more than a year after a prior settlement request was denied. Had the Commission recognized that BBC’s application had already been dismissed, it may not have ruled that the Petition was unacceptable.

5. In its Petition, RBI indicated that as the only remaining applicant, it expects to receive a permit in the near future. As such, RBI urged the Commission to issue a Notice of Proposed Rule Making to reallocate the channel to Goodman to provide a first local service. RBI recognized that it must await the issuance of a permit or risk having the channel opened up for application if the Allocations Branch took final action to reallocate the channel to Goodman prior to the issuance of the permit. Nevertheless, RBI made the conscious decision to proceed with the proposal and if it was not the permittee at the time of final action, it could apply for the channel in a window.

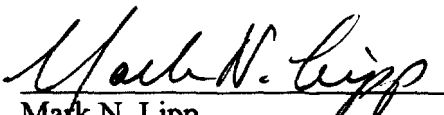
6. As stated, in its letter, the Commission staff failed to note that the BBC application had been dismissed on November 6, 1997, that RBI was the only remaining application and that its application had been placed on cut-off and can be granted in due course. This oversight was the basis for finding that the Petition was unacceptable. Accordingly, the Commission staff erred in its reason for not accepting the RBI Petition.

7. RBI will report in a Supplement when the permit is actually issued. In the interim, the Commission can issue a Notice of Proposed Rule Making proposing to modify the permit of RBI or open the channel for new applicants if the permit is not granted. The channel reallocation can be made based on the showing contained in the Petition that the provision of a first local service to Goodman will result in a preferential arrangement of channels under Section 307(b) of the Communications Act of 1934, as amended, and the Commission's priorities. See Revision FM Assignment Policies and Procedures, 90 FCC 2d 88 (1982).

Accordingly, RBI urges the Commission to proceed with the proposal to reallocate Channel 277C3 from Kosciusko to Goodman, Mississippi.

Respectfully submitted,

RAINEY BROADCASTING, INC.

By:   
Mark N. Lipp  
Ginsburg, Feldman and Bress  
1250 Connecticut Avenue, NW  
Washington, DC 20554  
(202) 637-9086

February 6, 1998

PH026.003

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## **EXHIBIT 1**

COPY

Before the  
FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C.

In the Matter of

Amendment of Section 73.202(b)  
Table of Allotments  
FM Broadcast Stations  
(Kosciusko and Goodman,  
Mississippi)

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FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C.

TO: Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

PETITION FOR RULE MAKING

Rainey Broadcasting, Inc. ("RBI"), applicant for a new FM broadcast station at Kosciusko, Mississippi (BPH-950525MK), by its counsel, hereby requests that the Commission consider reallocating Channel 277C3 from Kosciusko, Mississippi to Goodman, Mississippi as its first local service. RBI also requests modification of the permit it expects to receive as a single applicant for this channel to specify Goodman, accordingly.<sup>1/</sup> In support hereof, RBI states as follows:

PRELIMINARY MATTER

1. RBI recognizes that the Commission must first issue a permit for Channel 277C3 at Kosciusko to RBI before RBI can be granted a modification of its permit to specify a new community of license. See Section 1.87 and Santa Margarita and Guadalupe, CA 2 FCC Rcd 6930 (1987) rev. denied on other grounds 4 FCC Rcd 7887 (1989). In the Santa Margarita case, the party that had been awarded the channel in an Initial Decision had not been issued a permit at the time of the rule making decision due to an appeal of the hearing decision. Therefore, the Allocations Branch could not approve an upgrade for the

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<sup>1/</sup> Until recently, there was a competing applicant, Boswell Broadcasting Company ("BBC") (BPH-950504MF). However, BBC has voluntarily withdrawn its application. See Exhibit 1.

channel without having a permit to modify.

2. Here, RBI is now a single applicant for Channel 277C3 at Kosciusko and the application is ripe for grant. There has been no opposition pleadings filed nor issues raised by the Commission staff. Thus, the Allocations Branch can process this petition and coordinate with Audio Services Division to determine when the permit to RBI for Channel 277C3 at Kosciusko is issued. However, any delay in issuing the permit should not delay the issuance of a Notice of Proposed Rule Making based on the legitimate expectation that a permit will be granted.

#### CHANGE IN COMMUNITY OF LICENSE

3. RBI applied for Channel 277C3 at Kosciusko and intended to construct and operate a station for the community. However, RBI prefers to serve Goodman, Mississippi and provide a first local service to those residents. RBI hereby states that if the Commission grants this proposal, it will file an application to serve Goodman and construct the facility.

4. This proposal meets the requirements set forth in Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 4870 (1989) recons. granted in part 5 FCC Rcd 2094 (1990). Kosciusko (pop. 6,986) (1990 U.S. Census) located in Attala County, is well served by Stations WKOZ(AM), WBKJ(FM) and WJTA(FM). Whereas, Goodman, in Holmes County (pop. 1,256) has no local service. Thus, Goodman would receive a priority for a first local service over a fourth local service to Kosciusko. See Revision of FM Allotment Policies and Procedures 90 FCC 2d 88 (1982).

5. As shown in the attached engineering statement the allotment of Channel 277C3 to Goodman is in conflict with the retention of Channel 277C3 at Kosciusko. Otherwise, the proposed allotment meets the Commission's spacing requirements.

6. Goodman is not located in any urbanized area nor will the proposed 70 dBu coverage area reach any part of an urbanized area. Goodman is an incorporated community with its own post office, zip


code (39079), typical community businesses, governmental services and cultural organizations. See Exhibit 2.

7. Since the channel is currently unused at Kosciusko, despite the change in the proposed transmitter site there will be no actual loss in existing service. See e.g., Midway, Panacea and Quincy, Florida, 10 FCC Rcd 6112 (1995); Douglas, Tifton and Unionville, GA., 10 FCC Rcd 7706 (1995); Sanibel and San Carlos Park, Florida, 10 FCC Rcd 7215 (1995). As for the proposed 60 dBu coverage area (Goodman) compared to the applied for 60 dBu coverage area (Kosciusko), there will be a gain in the area and population. See Exhibit 3.

8. Accordingly, Rainey Broadcasting, Inc. proposes to reallocate Channel 277C3 from Kosciusko, Mississippi to Goodman, Mississippi, in order to provide a first local service, and to modify the permit of Rainey Broadcasting, Inc., upon its issuance, accordingly.

Respectfully submitted,

RAINEY BROADCASTING COMPANY, INC.

  
By: Mark N. Lipp  
Ginsburg, Feldman and Bress  
1250 Connecticut Avenue, N.W.  
Suite 800  
Washington, D.C. 20036  
(202) 637-9086

Its Counsel

September 17, 1997

PH002.001

::ODMA\PCDOCS\GFBDPCS\8863\1

## **EXHIBIT 1**



Before the  
Federal Communications Commission  
Washington, D.C. 20554

In Re Application of

Boswell Broadcasting Company

for a New FM station at  
Kosciusko, MS

)  
) File No. BPH-950504MF  
)  
)  
)  
)

To: Mass Media Bureau

**MOTION TO DISMISS**

Boswell Broadcasting Company ("Boswell"), by and through counsel and pursuant to Section 73.3568(a) 1/ of the Commission's Rules, 47 C.F.R. Sec. 73.3568(a), hereby files a motion to dismiss the above-captioned application. The application has been pending for over two years now, has yet to be designated for hearing and Boswell has decided not to pursue it at this time. See attached Statement of applicant.

**WHEREFORE**, the premises considered, the above-captioned application should be dismissed.

Respectfully submitted,  
BOSWELL BROADCASTING COMPANY

By: /s/ William D. Silva  
William D. Silva  
Law Offices of William D. Silva  
5335 Wisconsin Avenue, N.W.  
Suite 400  
Washington, D.C. 20015-2003

September 2, 1997

1/ This dismissal is not being filed pursuant to Section 73.3525.

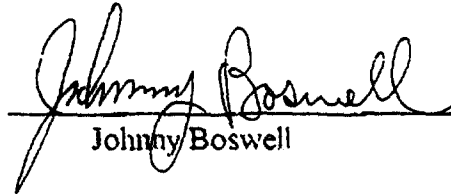
## STATEMENT

I, Johnny Boswell, hereby state under penalty of perjury as follows:

1. I am a partner in Boswell Broadcasting Company, which filed an application for a new FM station in Kosciusko, Mississippi (File No. BPH-950504MF) on May 4, 1995.

2. We are no longer interested in prosecuting this application and request that it be returned.

3. This action is being taken voluntarily and unilaterally by Boswell Broadcasting Company

  
Johnny Boswell

8/18/1997  
Date

**CERTIFICATE OF SERVICE**

I, William D. Silva, certify that I have, on this 2nd day of September, 1997, caused the foregoing Motion to Dismiss to be mailed, via first class mail, postage prepaid, to the following persons:

Mark Lipp, Esquire  
Ginsburg, Feldman and Bress  
1250 Connecticut Avenue, N.W.  
Washington, D.C. 20036  
Counsel for Rainey Broadcasting

/s/ William D. Silva  
William D. Silva

## **EXHIBIT 2**

**RAINEY BROADCASTING, INC.  
INFORMATION FOR GOODMAN, MS**

**CITY OF GOODMAN, MS  
COUNTY OF HOLMES  
TOWN HALL  
601-472-2263  
MAYOR  
JOHN ESTEP  
BOARD OF ALDERMAN (5)  
POPULATION  
1,300  
INDUSTRY  
HOLMES JR. COLLEGE - 1,500 STUDENTS  
FARMING  
POLICE CHIEF - BILLY FLOYD  
FIRE CHIEF - TERRY MOON  
NEWSPAPER  
WEEKLY - HOLMES COUNTY JOURNAL  
GOODMAN MAGNOLIA CLUB  
MEETS 3RD MONDAY - SEPT. - MAY  
WOMEN'S READING CLUB  
MONTHLY MEETINGS  
MASONIC LODGE  
3RD TUESDAY EACH MONTH  
CITIES IN TRADE AREA OF GOODMAN, MS  
LEXINGTON, MS  
DURANT, MS  
PICKENS, MS  
TCHULA, MS  
WEST, MS**

**EXHIBIT 3**

	Area (in sq. km)	population
AP 277	4,775.3	51,315
AD 277 C3	4,803.8	51,867
overlapped	3,665.4	42,388

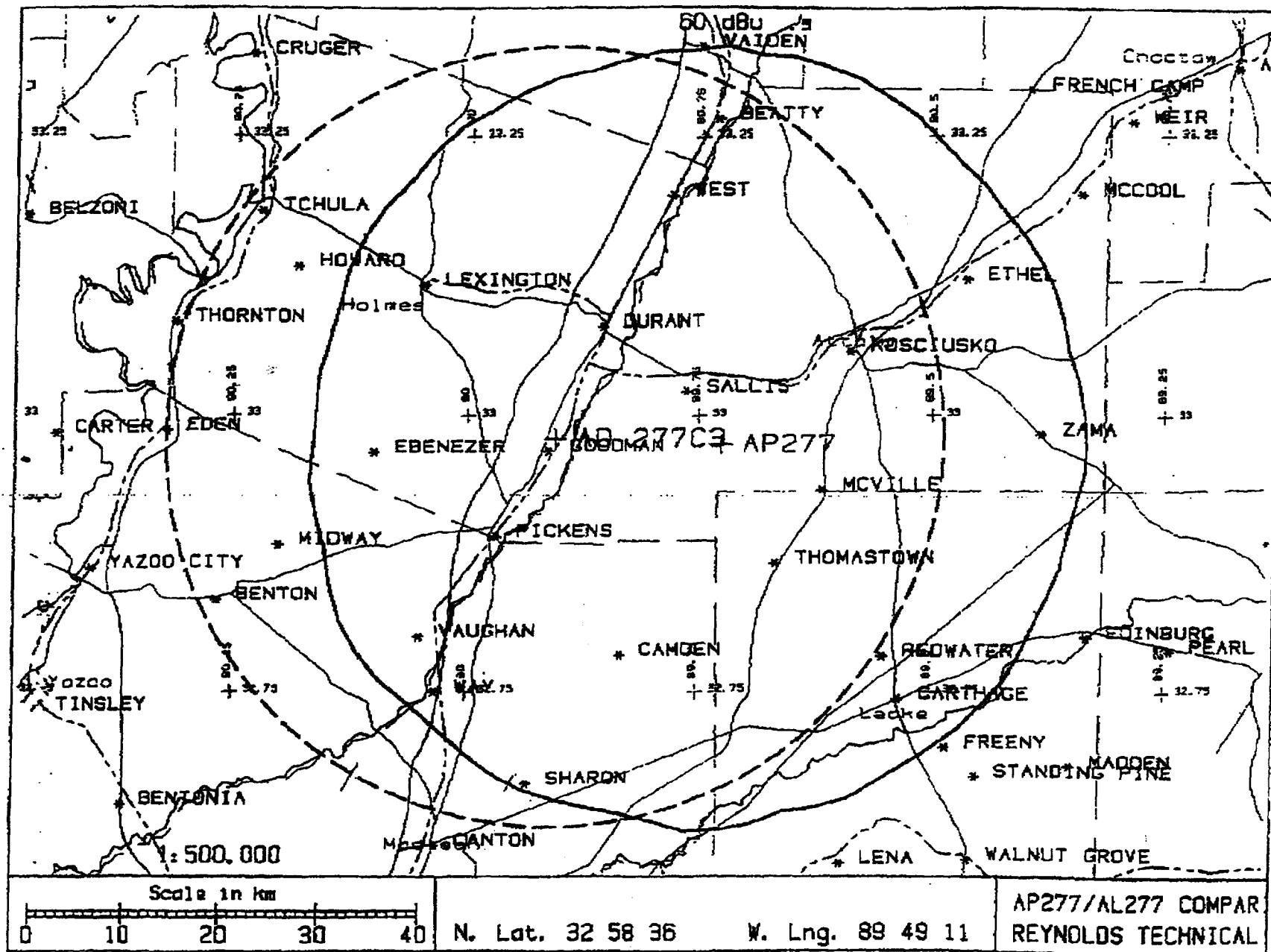
AD 277 C3 is 0.6 percent larger in area compared to AP 277 and has 1.1 percent more population.

The overlapped area is 76.8 percent of the area of AP 277 and has 17.4 percent less population.

P.01

3343022940

P.R.C.





# **ENGINEERING STATEMENT**

**IN SUPPORT OF A**

## **PETITION FOR RULE MAKING**

**Channel 277C3 Kosciusko, Mississippi**  
Rainey Broadcasting, Inc.

### **GENERAL**

The instant engineering statement supports a petition for rule making by Rainey Broadcasting, Inc. ("RAINEY") which is a Mississippi Corporation and an applicant for channel 277C3 at Kosciusko, Mississippi. Rainey is hereby petitioning the Commission to institute a Notice of Proposed Rule Making (NPRM) for the deletion of channel 277C3 at Kosciusko and allocation of the same channel and class to Goodman, Mississippi, as that community's first local service. Rainey has an agreement with the other applicant for channel 277C3 at Kosciusko, Boswell Broadcasting Company, concerning the proposed changes. That agreement is discussed in the legal section of the instant petition.

### **CHANNEL 277C3 AT GOODMAN QUALIFICATIONS**

As shown by the attached channel study, channel 277C3, when allocated to Goodman, appears to have no short spacing to any known licensed facilities, proposed minor changes or proposed rule makings. It also appears that the nearest short spacing concerns are as follows: WMSI(FM), (channel 275C) Jackson, Mississippi, at 207.7° (Degrees) True;

ALOPEN(FM) (channel 278C), Como, Mississippi, at 18.4°(Degrees) True; WWKZ(FM), (channel 278C), New Albany, Mississippi, at 31.1°(Degrees) True; and WMBC(FM), (channel 276C2) Columbus, Mississippi, at 72.3° True. The intersecting of these minimum distance separation contours create the location area (window) for a fully spaced antenna site for channel 277C3 at Goodman.

Exhibit A is an allocations study using a minor site restriction (1.23 km) for a channel 277C3 at Goodman reference site. The allocations study depicts that the proposed channel 277C3 allocation site at Goodman is only 17.19 kilometers from the same channel's reference coordinates at Kosciusko. Therefore, the two allocations are mutually exclusive.

Exhibit B is a computer generated map depicting the allocations window for channel 277C3 at Goodman. The clear spaced location window is depicted as a shaded area. In addition, a class C3 70 dBu contour is shown (23.2 km). The required city grade contour service to the community of license is clearly demonstrated.

### PETITION SUMMARIZE

The petition for the allocation of channel 277C3 at Goodman can be SUMMARIZE as follows:

<u>COMMUNITY</u>	<u>PRESENT</u>	<u>PROPOSED</u>
Kosciusko	286C1 - 277C3	286C1
Goodman	-----	277C3

No substitutions of channels in other markets or interruption of service are necessary for this allocation. Since there are no channel deletions or substitutions necessary for the allocation of channel 277C3 at Goodman, it can be allotted and Rainey can file an application for a construction permit filed immediately.

### CONCLUSION

RAINEY is petitioning the Commission to institute a Notice of Proposed Rule Making leading to the deletion of channel 277C3 at Kosciusko and the allocation of that same channel at Goodman as that community's first local service. This channel is available for allocation immediately, as it requires no deletions and/or substitutions in other communities.

**In Support of a**

# PETITION FOR A

## RULE MAKING

(Deleting Ch 277C3 @ Kosciusko, Mississippi  
Substituting Ch 277C3 @ Goodman, Mississippi)  
RAINEY BROADCASTING, INC.

## CH 277C3 @ GOODMAN ALLOCATION STUDY

[DEPICTING SPACING TO ALL KNOWN FM FACILITIES]

32 58 45 N.  
89 54 22 W.

### Class C3

Search Date  
07-03-97

Current rules spacings  
Channel 277 -103.3 MHz

Call	Ch#	City
------	-----	------

State	Bear'	Dist'	R'grd	Margin
-------	-------	-------	-------	--------

## Community of Goodman

MS 180.0 1.23 \*

**Reference Coordinates:**

North Latitude: 32-58-05

West Longitude: 89-54-45

**AP277 277C3 Kosciusko**

MS 110.9 14.09 153.0 -138.91 \*

Of No Concern

### Application Site of MX Application

(Boswell Broadcasting Company)

File No. BPH-950504MF

**See Applicant's Agreement in Legal Statement**

**AP277 277C3 Kosciusko**

**MS 91.9 16.86 153.0 -136.14 \***

Of No Concern

Application Site of Petitioner

File No. BPH-950525MK

**ALOPEN 277C3 Kosciusko**

MS 90.7 17.19 153.0 -135.81 \*

Of No Concern

### Allocation of Ch 277C3 @ Kosciusko

WMSI 275C Jackson

MS	207.7	96.00	96.0	0.00	*
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ALOPEN 278C Como

MS 18.4 183.12 176.0 7.12 \*

WWKZ 278C New Albany

MS 31.1 183.67 176.0 7.67 \*

WMBCFM 276C2 Columbus

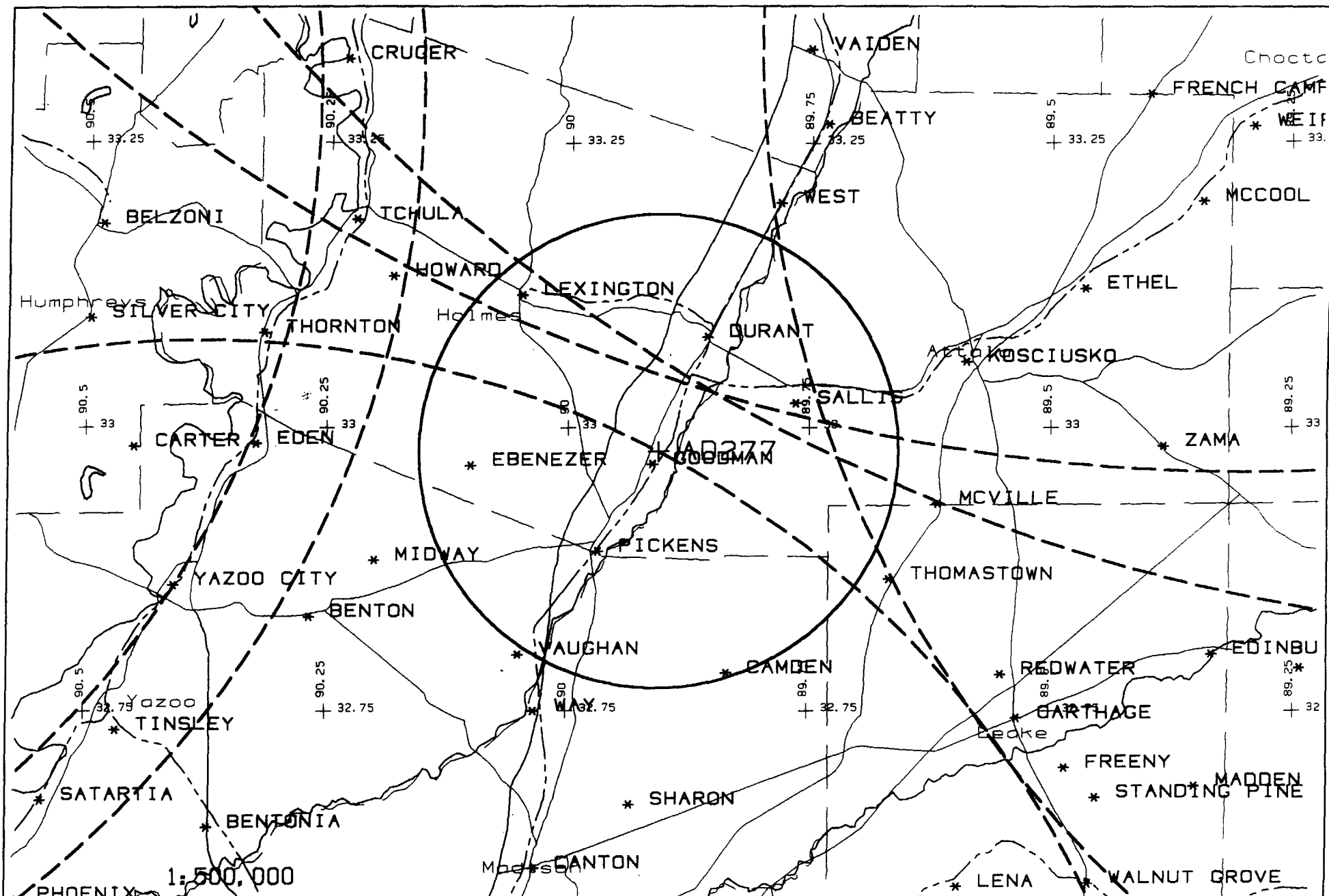
MS	72.3	133.15	117.0	16.15
----	------	--------	-------	-------

KZYQ.C 278C3 Lake Village

AR	285.5	126.97	99.0	27.97
----	-------	--------	------	-------

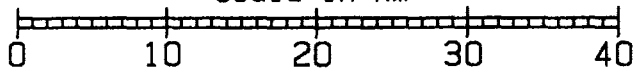
KZYO 278A Lake Village

AR	285.4	126.88	89.0	37.88
----	-------	--------	------	-------



1:500,000

Scale in km



N. Lat. 32 58 45

W. Lng. 89 54 22

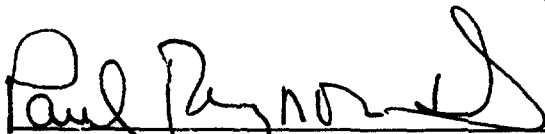
AD 277C3 GOODMAN, N  
REYNOLDS TECHNICAL

**ENGINEERING CERTIFICATION**

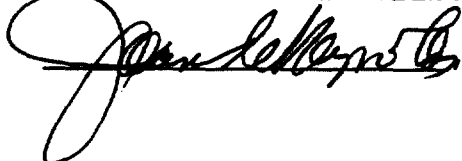
STATE OF ALABAMA    )  
                              )  
BUTLER COUNTY        )

Paul Reynolds, being first duly sworn upon oath deposes and says:

- \* That he has completed undergraduate studies in the field of communications at the University of Southern Mississippi.
- \* That he has completed course requirements for a Masters Degree in communications at the University of Alabama.
- \* That he completed basic electronics at DeVry Technical Institute.
- \* That he has been operating as an independent communications consultant since 1980.
- \* That he is familiar with the Commission's Rules and Regulations.
- \* That the engineering information for the instant Rainey Broadcasting, Inc. petition for rule making at Goodman, Mississippi, was prepared by him or under his direct supervision.
- \* That all information presented is believed to be true and correct and in full compliance of the technical standards contained in the Commission's Rules and Regulations in affect at the time of the petition's filing date.

  
Paul Reynolds

Sworn to and subscribed before, this 7 day of July, 1997.

 my commission expires 7-15-2000.

# **CERTIFICATE OF SERVICE**

I, Lisa M. Balzer, a secretary in the law firm of Ginsburg, Feldman and Bress Chartered, do hereby certify that I have this 17th day of September, 1997, caused to be mailed by first class mail, postage prepaid, copies of the foregoing "PETITION FOR RULE MAKING" to the following:

William D. Silva, Esq.  
Law Offices of William D. Silva  
5335 Wisconsin Avenue, NW  
Suite 400  
Washington, DC 20015-2003  
(Counsel to Boswell Broadcasting Company)

  
Lisa M. Balzer

## **EXHIBIT 2**



Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
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MM Docket No. \_\_\_\_\_  
RM-9174

To: Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

**SUPPLEMENT TO PETITION TO RULE MAKING**

Rainey Broadcasting, Inc. ("RBI"), by its counsel, hereby supplements the above referenced petition filed on September 17, 1997, to report that on November 6, 1997, the Commission issued the attached letter dismissing the only other pending application for Kosciusko, Mississippi and rendering RBI's application as a singleton application for Channel 277C3 at Kosciusko. In its petition for Rule Making, RBI indicated that it expected the FCC to grant the pending application and issue a permit in the near future. The recent action by the Commission moves the process toward granting the RBI application one step closer. Accordingly, RBI urges the Commission to issue a Notice of Proposed Rule Making proposing to reallocate Channel 277C3 from Kosciusko to Goodman, Mississippi, as its first local service, and to modify its expected permit, accordingly.